

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re CHINESE DRYWALL LITIGATION MDL No. 2047

Builders Mutual Insurance Company v. Dragas Management Corp., et al E.D. Virginia, C.A.
No. 2:09-cv-185

**PLAINTIFFS' LIAISON COUNSEL'S RENEWED PETITION
FOR NOTICE OF TAG ALONG**

I. INTRODUCTION

On July 15, 2009, Plaintiffs' Liaison Counsel, pursuant to Rule 7.5(e), noticed this Court that this action is a related action and should be transferred and consolidated in the Eastern District of Louisiana in the *In Re: Chinese Manufactured Drywall Products Liability Litigation*, MDL No. 2047. This Panel, without argument, found this matter *sua sponte* was not related to *In Re: Chinese Manufactured Drywall* and thus, did not transfer the action. Plaintiffs' Liaison Counsel now submits this brief to renew our notice of tag along of the above matter and in support of the same, sets forth the now detailed history of the proceeding before the Honorable Eldon E. Fallon in the transferee court.

II. FACTS

Builders Mutual Insurance Company (“Builders”) brought a declaratory judgment action against Dragas Management Corporation (“Dragas”), Hanover Insurance Company (“Hanover”) and Firemen’s Insurance Company of Washington, D.C. (“Firemen’s”). See Complaint attached hereto as Exhibit “A”. This action involves an insurance coverage dispute arising out of Builders’ refusal to cover Dragas pursuant to its policy for third party claims or suits for damages that resulted from the installation of Chinese Drywall in two housing developments.

In February, 2009, Dragas made a claim and demand on Builders for coverage for property damage due to Chinese drywall installed in certain residences. On April 6, 2009, Builders denied coverage for the Chinese drywall claim on the ground that the claim was excluded under the total pollution exclusion contained in all of Builders’ policies. The denial by Builders is based on a common pollution exclusion clause which is found in most insurance policies. Plaintiffs’ Liaison Counsel request this Court consolidate and transfer this action pursuant to 28 U.S.C. § 1407 to the Eastern District of Louisiana with all other Chinese Drywall matters.

III. MDL PROCEEDINGS

This Panel chose the United States District Court of Louisiana as the forum for consolidation and transfer of all the Chinese drywall litigation before the Honorable Eldon E. Fallon. Pursuant to the consolidation, Judge Fallon has established discovery plans, the inspections of properties and various Pre-Trial Orders with regards to the litigation.

Judge Fallon has also established state and federal coordination for all the state cases throughout the country appointing a liaison counsel for each state. Along with discovery

scheduling deadlines for actions involving the manufacture, supply and use of Chinese drywall, the Court has undertaken to provide a forum for addressing the insurance issues at issue in this Petition. See *In Re: Chinese Drywall Products Liability Litigation*, Minute Entry September 24, 2009 of Judge Fallon attached hereto as Exhibit "B" at XIV. The Court states:

There are a number of issues involving insurance matters that will be addressed in this litigation. These include actions against insurers of manufacturers, exporters, importers, brokers, distributors, builders, drywall contractors/installers and homeowners.

Plaintiffs informed the Court that they have created a chart on insurance companies involved in Chinese Drywall litigation and that they would provide it to the Court.

See Minute Entry at XIV (Emphasis supplied)

In fact, Judge Fallon expects to be involved in many insurance matters in this MDL not only because defendants may bring declaratory judgement actions to determine insurance coverage issues but also because Louisiana law provides a direct action statute for the underlying plaintiffs to bring actions against the defendants' insurers to determine coverage issues. LSA-R.S. 22:985. See also *Vincent v. Pen Rod Drilling Company*, 372, So.2d 807 (La. Ct. App. 3d Cir. 1979). Thus, it is beyond peradventure that many direct actions against insurance carriers will address similar issues with regards to whether the carriers are required under their policy to cover the insured for damages in the underlying lawsuits resulting from the use of Chinese drywall.

Further, this Court has already ordered a conditional transfer of a similar matter involving insurance coverage issues in *General Fidelity Insurance Company v. Catherine Foster, et al*, S.D.Fl. No. 9:09-80754. See Exhibit "B" for Conditional Transfer Order and Order Reinstating

Stay of Conditional Transfer Order (Sept. 25, 2009).¹

Since inception of the E.D. La. MDL, at least three (3) actions have been filed therein naming insurance carriers and placing in issue similar or identical insurance policy provisions. *See Borne v. Liberty Mut. Fire Ins. Co.* (E.D. La.; CA No. 09-6073); *Van Winkle v. Nautilus Ins. Group* (E.D. La.; CA No. 09-4378); *West v. State Farm Fire & Cas. Co.* (E.D. La.; CA No. 09-6356).

It is clear that Judge Fallon is prepared to address the insurance coverage issues in this litigation. This will prevent duplication and inconsistent results and provide for a more efficient adjudications.

Plaintiffs' Liaison Counsel respectfully requests this Court reconsider its denial of the original notice of tag along in the above matter and issue an order consolidating and coordinating this matter to the Eastern District of Louisiana before Judge Fallon pursuant to § 1428 U.S.C. 1407.

¹General Fidelity has served notice of opposition to conditional transfer.

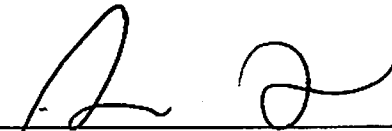
IV. CONCLUSION

Plaintiffs' Liaison Counsel respectfully requests this Court coordinate and consolidate the matter before the Eastern District of Louisiana.

Respectfully submitted,

Dated: October 7, 2009

By:


Russ M. Herman, Esquire
Leonard A. Davis, Esquire
HERMAN, HERMAN, KATZ & COTLAR, LLP
820 O'Keefe Avenue
New Orleans, Louisiana 70113
Phone: (504) 581-4892
Fax: (504) 561-6024
Plaintiffs' Liaison Counsel
MDL 2047

PLAINTIFFS' STEERING COMMITTEE

Arnold Levin, Esquire
Daniel C. Levin, Esquire
Levin, Fishbein, Sedran & Berman
510 Walnut Street, Suite 500
Philadelphia, PA 19106
215-592-1500 (phone)
215-592-4663 (fax)
Alevin@lfsblaw.com
Plaintiffs' Lead Counsel
MDL 2047

Dawn M. Barrios, Esquire
Barrios, Kingsdorf & Casteix, LLP
701 Poydras Street, Suite 3650
New Orleans, LA 70139
Phone: (504) 524-3300
Fax: (504) 524-3313
Barrios@bkc-law.com

Daniel E. Becnel, Jr. , Esquire
Becnel Law Firm. LLC
P.O. Drawer H
106 W. Seventh Street
Reserve, LA 70084
Phone: (985) 536-1186
Fax: (985) 536-6445
dbecnel@becnellaw.com

Victor Manuel Diaz, Esquire
Podhurst Orseck, P.A.
25 Flagler Street, 8th Floor
Miami, FL 33130
Phone: (305) 358-2800
Fax: (305) 358-2382
vdiaz@podhurst.com

Ervin A. Gonzalez, Esquire
Colson, Hicks, Eidson, Colson
Matthews, Martinez, Gonzales,
Kalbac & Kane
255 Aragon Avenue, 2nd Floor
Cora Gables, FL 33134
Phone: (305) 476-7400
Fax: (305) 476-7444
Ervin@colson.com

Ben W. Gordon, Jr. , Esquire
Levin, Papantonio, Thomas, Mitchell
Echsner & Proctor, P.A.
316 S. Baylen Street, Suite 600
Pensacola, FL 32502
Phone: (850) 435-7000
Fax: (850) 435-7020
bgordon@levinlaw.com

Hugh P. Lambert, Esquire
Lambert and Nelson
701 Magazine Street
New Orleans, LA 70130
Phone: (504) 581-1750
Fax: (504) 529-2931
hlambert@lambertandnelson.com

Bruce William Steckler, Esquire
Baron & Budd, P.C.
3102 Oak Lawn Ave., Suite 1100
Dallas, TX 75219
Phone: (214) 521-3605
Fax: (214) 520-1181
bsteckler@baronbudd.com

Gerald E. Meunier, Esquire
Gainsburgh, Benjamin, David, Meunier
& Warshauer, LLC
2800 Energy Centre, 1100 Poydras Street
New Orleans, LA 70163-2800
Phone: (504) 522-2304
Fax: (504) 528-9973
gmeunier@gainsben.com

Jerrold Seith Parker, Esquire
Parker, Waichman, Alonso LLP
27399 Riverview Center Blvd.
Bonita Springs, FL 34134
Phone: (239) 390-1000
Fax: (239) 390-0055
Jerry@yourlawyer.com

James Robert Reeves, Esquire
Lumpkin & Reeves
160 Main Street
Biloxi, MS 39530
Phone: (228) 374-5151
Fax: (228) 374-6630
jrr@lumpkinreeves.com

Christopher Seeger, Esquire
Seeger Weiss, LLP
One William Street
New York, NY 10004
Phone: (212) 584-0700
Fax: (212) 584-0799
cseeger@seegerweiss.com

Scott Wm. Weinstein, Esquire
Morgan & Morgan
12800 University Drive, Suite 600
Ft. Meyers, FL 33907
Phone: (239) 433-6880
Fax: (239) 433-6836
sweinstein@forthepeople.com

INDIVIDUAL PLAINTIFFS' COUNSEL

Russ M. Herman, Esquire
Leonard A. Davis, Esquire
HERMAN, HERMAN, KATZ & COTLAR, LLP
820 O'Keefe Avenue
New Orleans, Louisiana 70113
Phone: (504) 581-4892
Fax: (504) 561-6024

**OF COUNSEL TO PLAINTIFFS' STEERING
COMMITTEE**

Richard S. Lewis, Esquire
HAUSFELD LLP
1700 K Street, N.W.
Suite 650
Washington, DC 20006
Phone: (202) 540-7200
Fax: (202) 540-7201
rlewis@hausfeldllp.com

Daniel K. Bryson, Esquire
Lewis & Roberts
3700 Glenwood Avenue, Suite 410
Raleigh, NC 27612
Phone: (919) 981-0191
Fax: (919) 981-0431
dkb@lewis-roberts.com

Jeremy W. Alters, Esquire
Alters, Boldt, Brown, Rash & Culmo, P.A.
4141 N.E. 2nd Avenue
Suite 201
Miami, FL 33137
Phone: (305) 571-8550
Fax: (305) 571-8559
jeremy@abbrclaw.com

Richard Serpe, Esquire
LAW OFFICES OF RICHARD J. SERPE
Crown Center, Suite 310
580 East Main Street
Norfolk, VA 23510-2322
Phone: (757) 233-0009
Fax: (757) 233-0455
rserpe@serpefirm.com

**SPECIAL COUNSEL TO PLAINTIFFS'
STEERING COMMITTEE**

Harry T. Lemmon, Esquire
Attorney at Law
650 Poydras Street, Suite 2335
New Orleans, LA 70130
Phone: (504) 581-5644
Fax: (504) 581-2156
hlemmon@bellsouth.net

Edward F. Sherman
Tulane Law School
6329 Freret Street
New Orleans, LA 70118-5670
Phone: (504) 865-5979
esherman@tulane.edu

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Plaintiffs' Liaison Counsel's Renewed Petition for Notice of Tag along to be served this 7th day of October, 2009 by U.S. mail, postage prepaid, upon the following:

SEE ATTACHED MDL PANEL SERVICE LIST

Also to be served:

Danny M. Howell, Esquire
Sands Anderson Marks & Miller
1481 Chain Bridge Road, Ste. 200
McLean, VA 22101

Honorable Rebecca Beach Smith
United States District Court
Eastern District of Virginia
193 Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915



DANIEL C. LEVIN

**Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation**

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more than one attorney. See Panel rule 5.2(c).

Party Representation Key

- * Signifies that an appearance was made on behalf of the party by the representing attorney.
 - # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
- All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2047 - Chinese-Manufactured Drywall PL
For Open Cases

Judicial Panel on Multidistrict Litigation - Panel Service List

Page 1

Docket: 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation

Status: Transferred on 06/15/2009

Transferee District: LAE Judge: Fallon, Eldon E.

Printed on 10/05/2009

ATTORNEY - FIRM**REPRESENTED PARTY(S)**

Atlas, Jan Douglas
ADORNO & YOSS LLP
350 East Las Olas Blvd
Suite 1700
Fort Lauderdale, FL 33301-4217

=> Phone: (954) 763-1200 Fax: (954) 766-7800 Email: jda@adorno.com
Banner Supply Co.*

Bass, Hilario
GREENBERG TRAURIG LLP
1221 Brickell Avenue
Miami, FL 33131

=> Phone: (305) 579-0500 Fax: (305) 579-0717 Email: bassh@gdaw.com
Lennar Corp.*; Lennar Homes, LLC aka Lennar Homes, Inc.*; U.S. Home Corp.*

Baumann, Gary F.
FULMER LEROY ALBEE BAUMANN & GLASS
2866 East Oakland Park Blvd.
Fl. Lauderdale, FL 33306

=> Phone: (954) 707-4430 Fax: (954) 707-4431 Email: gbaumann@fulmerleroy.com
Independent Builders Supply Association, Inc.*

Becnel, Jr, Daniel E.
BECNEL LAW FIRM LLC
106 West Seventh Street
P.O. Drawer H
Reserve, LA 70084

=> Phone: (985) 536-1186 Fax: (985) 536-6445 Email: dbecnel@beecnellaw.com
Donaldson, Jill M.; Oertling, John

Boldt, Kimberly L.
ALTERS BOLDT BROWN RASH & CULMO PA
4141 N.E. 2nd Avenue
Suite 201
Miami, FL 33137

=> Phone: (305) 571-8550 Fax: (305) 571-8558 Email: kimberly@abbrclaw.com
Barrozo, Hector*; DeBarrozo, Maria Ines Pinur*; Garcia, Angela*; Garcia, Lorena*

Briscoe, Edward J.
FOWLER WHITE BURNETT PA
Espirito Santo Plaza
1395 Brickell Avenue
14th Floor
Miami, FL 33131-3302

=> Phone: (305) 789-9200 Fax: (305) 789-9201 Email: EJB@Fowler-White.com
Black Bear Gypsum Supply, Inc.*

Burge, S. Greg
BURR & FORMAN LLP
420 North 20th Street
Suite 3400
Birmingham, AL 35203

=> Phone: (205) 458-5101 Fax: (205) 244-5612 Email: gburge@burr.com
Rightway Drywall, Inc.*

Casper, Christopher C.
JAMES HOYER NEWCOMER & SMILJANICH PA
One Urban Centre
4830 West Kennedy Boulevard
Suite 550
Tampa, FL 33609-2589

=> Phone: (813) 286-4100 Fax: (813) 286-4174 Email: ccasper@jameshoycr.com
Culliton, Kristin Morgan*

(Panel Attorney Service List for MDL 2,047 Continued)

Page 2

ATTORNEY - FIRM**REPRESENTED PARTY(S)**

Cole, Susan J.
BICE COLE LAW FIRM
2801 Ponce De Leon Boulevard
Suite 550
Coral Gables, FL 33134

=> Phone: (305) 444-1225 Fax: (305) 446-1598 Email: cole@bicecolelaw.com
L&W Supply Corp. dba Seacoast Supply*; USG Corp.*

Coutroulis, Chris S.
CARLTON FIELDS PA
P.O. Box 3239
4221 West Boy Scout Boulevard
Suite 1000
Tampa, FL 33601-3239

=> Phone: (813) 223-7000 Fax: (813) 229-4133 Email: ccoutroulis@carltonfields.com
M/I Homes, Inc.*

Diaz, Jr., Victor Manuel
PODHURST ORSECK PA
City National Bank Building
Suite 800
25 W. Flagler Street
Miami, FL 33130

=> Phone: (305) 358-2800 Fax: (305) 358-2382 Email: vdiaz@podhurst.com
Green, Dajan*; Morris-Chin, Janet*

Gilman, Kenneth G.
GILMAN & PASTOR LLP
6363 Highcroft Drive
Naples, FL 34119

=> Phone: (239) 213-9960 Fax: (239) 213-9946 Email: kgilman@gilmanpastor.com
Ankney, Duane

Interior Exterior Bldg.,
727 S. Cortez
New Orleans, LA 70119

=>
Interior Exterior Building Supply

Knauf Gips KG,
Ridham Dock, Kemsley
Sittingbourne, Kent ME9 8SR, UK

=>
Gebr Knauf Verwaltungsgesellschaft KG; Knauf Gips KG

Knauf Plasterboard,
North Yinhe Bridge, East Jingjin Road
Beichan District
Tianjin, China 300400 P.R.C.

=>
Knauf Plasterboard (Tianjin) Co., Ltd.

Knauf Plasterboard,
No. 2 Gang Wan Road
RC-241009 Whuhu Anhui, China

=>
Knauf Plasterboard (Dongguan) Co., Ltd.; Knauf Plasterboard (Wuhu) Co., Ltd.

Knauf Plasterboard,
No. 2 Xinshe Development Zone
RC-52347 Guangdong, China

=>
Knauf Plasterboard (Dongguan) Co., Ltd.

La Suprema Enterprise,
2221 NE 164th Street
Suite 335
North Miami Beach, FL 33160

=>
La Suprema Enterprise, Inc.

(Panel Attorney Service List for MDL 2,047 Continued)

Page 3

ATTORNEY - FIRM**REPRESENTED PARTY(S)**

La Suprema Trading, Inc.,
2221 NE 164th Street
Suite 335
N. Miami Beach, FL 33160
*** Bad Address ***

=>
La Suprema Trading, Inc.

Landskroner, Jack
LANDSKRONER GRIECO MADDEN LTD
1360 West 9th Street
Suite 200
Cleveland, OH 44113

=>Phone: (216) 522-9000 Fax: (216) 522-9007 Email: jack@lgmlegal.com
Minajiri, Steven

Levin, Arnold
LEVIN FISHBEIN SEDRAN & BERMAN
510 Walnut Street
Suite 500
Philadelphia, PA 19106-3697

=>Phone: (215) 592-1500 Fax: (215) 592-4663 E-mail: alevin@lfsblaw.com
Martinez, Felix*; Martinez, Jenny*; Niemczura, Walter*; Raphael, Gene*; Santiago, Jason*; Tarzy, Jim*; Vickers, Karin*

Nicholas, Steven L.
CLUNNINGHAM BOUNDS LLC
1601 Dauphin Street
P.O. Box 66705
Mobile, AL 36660

=>Phone: (251) 471-6191 Fax: (251) 479-1031 Email: sln@cunninghambounds.com
Mitchell Co., Inc. (The)*

Reise, Jack
COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
120 East Palmetto Park Road
Suite 500
Boca Raton, FL 33432

=>Phone: (561) 750-3000 Fax: (561) 750-3364 Email: jreise@csgrr.com
Riesz, Lawrence*; Schnee, Jennifer*

Rothchild International,
N-510 Chia Hsn Bld.
Annex 96 Chung Shan N. Rd. Sec. 2
Taipei, Taiwan R.O.C.
*** Bad Address ***

=>
Rothchild International Ltd.

Schwartz, Steven G.
SCHWARTZ & HIRWITZ PLC
6751 North Federal Highway
Suite 400
Boca Raton, FL 33487

=>Phone: (561) 395-4747 Fax: (561) 367-1550 Email: sgs@sandblawfirm.com
South Kendall Construction Corp.*

Sivyer, Neal A.
SIVYER BARLOW & WATSON PA
401 East Jackson Street
Suite 2225
Tampa, FL 33602

=>Phone: (813) 221-4242 Fax: (813) 227-3598
Taylor Morrison Services, Inc. dba Morrison Homes; Taylor Woodrow Communities at Vasari, LLC*

Steckler, Bruce
BARON & BUDD

=>Phone: (214) 521-3605 Fax: (214) 520-1181 Email: bsteckler@baronbudd.com
Foster, Katherine L.*

(Panel Attorney Service List for MDL 2,047 Continued)

Page 4

ATTORNEY - FIRM**REPRESENTED PARTY(S)**

3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219-4281

Taishan Gypsum Co., Ltd.,
Dawenkou, Tiaian
Shandong, China 271026

⇒

Taishan Gypsum Co., Ltd. aka Shandong Taihe Dongxin Co., Ltd.

Weinstein, Scott Wm.
MORGAN & MORGAN PA
12800 University Drive
Suite 600
Fort Myers, FL 33907

⇒ Phone: (239) 433-6880 Fax: (239) 433-6836 Email: sweinstein@forthepeople.com
Allen, Nicole J.*; Allen, Shane M.*